

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 481 of 2009 (M/S)

Joseph Solemn Petitioner

Versus

Punjab National Bank and others ... Respondents

Mr. Sharad Sharma, learned counsel for the petitioner.
Mr. L.K. Tiwari, learned counsel for the respondent-Bank.

31st March, 2009

Hon'ble Sudhanshu Dhulia, J.

The petitioner has an alternative remedy to file an appeal before the Debts Recovery Tribunal under Section 17 (1) of the Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "Act"). Therefore, the writ petition is liable to be dismissed on the ground of alternative statutory remedy. However, there appears to be an urgency in the matter inasmuch as now the bank/financial institution has already taken recourse under Section 13 (4) of the Act and it is alleged that the possession has been taken over of the plot and the residential house of the petitioner. The Division Bench of this Court in its judgment in **Unique Engineering Works Vs. Union of India and others** reported in 2004 (1) **U.D., 359** while upholding the constitutional validity of the Act has given certain suggestions and one of these suggestions regarding residential house is as follows :

"8. Recommendations :-

A.....

B.

(a)....

(b) ...

(c) ...

(d) ...

**(e) As far as sale of residential houses are
concerned banks should try to recover the loan**

amount from principal borrower. They should try to encash securities other than the residential property in the first instance and it is only if the balance remains after selling other securities that the banks can sell the residential property after giving notice. In other words, residential house should be sold as a matter of last resort.”

Therefore, although this Court is dismissing the petition on the ground of alternative remedy before the Debts Recovery Tribunal, it is also directed that till the period of one month from today the respondent-Bank will not initiate any auction process regarding mortgaged property of the petitioner. This is being done in order to give the petitioner sufficient time to approach the Debts Recovery Tribunal.

With these directions, writ petition is disposed of.

(Sudhanshu Dhulia, J.)

31.3.2009

Avneet

